

2022 LiveLaw (SC) 720

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
AJAY RASTOGI; J., C.T. RAVIKUMAR; J.**

August 29, 2022

**CIVIL APPEAL NO. 5874 OF 2022 (@ SPECIAL LEAVE PETITION (C) NO.5079 OF 2020)
HARKIRAT SINGH GHUMAN *versus* PUNJAB & HARYANA HIGH COURT & ORS.**

Judicial Service Examination - Where the written examination is followed with *viva-voce*, declaration of result of the written examination before conducting *viva-voce* may not be valid and justified but in cases where determination of merit is based on written examination, it must be declared and made available to candidates without any loss of time and this Court can take a judicial notice of the fact that in such cases where the written examination is followed with interview / *viva-voce* and the members in the interview board are made aware of the marks secured by the candidates in the written examination that may likely to form bias affecting the impartial evaluation of the candidates in *viva-voce* and in our considered view, it may always be avoided. (Para 28-29)

Judicial Service Examination - Particularly in such cases where there is a multiple choice question paper, it is always advisable that for such question papers, there shall always be an OMR sheet which may be provided to the candidates so that the question paper can be retained by each of the participants and after the examination is held, a provisional answer key is to be uploaded inviting objections from the candidates who had participated in the selection process, to be furnished within a reasonable time and after collating such objections, the same be placed before a subject expert committee to be constituted by the recruiting/competent authority and after the report is submitted by the subject expert committee, the same be examined by the recruiting authority and thereafter the final answer key is to be uploaded. We make it clear that no presumption is to be drawn that the result has to be declared, but at least the candidates may be provided the final answer keys to enable them to make their own assessment. (Para 26)

Punjab/Haryana Superior Judicial Service Examination, 2019 - High Court dismissed writ petition challenging the examination process - Allowing the appeal, the Supreme Court directed : Valuate the marks obtained of question nos. 1,2,3 and 5 of Paper V (Criminal Law) (out of total 160 marks) and after undertaking the process, a fresh result of the written examination be declared of the candidates in reference to Punjab/Haryana Superior Judicial Service Examination, 2019 and those who qualify and fall in the zone of three times the number of vacancies may be called for *viva-voce* and result of the selection process, thereafter be finally declared in accordance with the scheme of Rules, 2007.

(Arising out of impugned final judgment and order dated 23-01-2020 in CWP No. 1769/2020 passed by the High Court of Punjab & Haryana at Chandigarh)

For Petitioner(s) Mr. Deepkaran Dalal, AOR

For Respondent(s) Mr. Abhimanyu Tewari, AOR Ms. Eliza Bar, Adv. Mr. Rajive Bhalla, Sr. Adv. Mr. Sumeir Ahuja, Adv. Mr. Yajur Bhalla, Adv. Mr. Deepak Samota, Adv. Mr. Ashish Vajpayee, Adv. Ms. Akansha Gulati, Adv. Mr. Shubham Bhalla, AOR Mr. Raktim Gogoi, Adv. Mr. Kartikeya Singh, Adv. Ms. Anubha Attray, Adv. Mr. Saurabh B. Mishra, Adv. Mr. Rakesh Kumar Singh, AOR Ms. Malvika Kapila, AOR Mr. Ajay Kumar Singh, AOR Mr. Yatharth Singh, Adv. Mr. Divesh Kumar, Adv. Mr. Jay Savla, Sr. Adv. Ms. Renuka Sahu, AOR Mr. Jasdeep Singh Dhillon, Adv. Mr. Lakshmeesh S. Kamath, AOR Ms. Samriti Ahuja, Adv. Mr. Jasdeep Singh Dhillon, Adv. Mr. Prabhat Kumar Chaurasia, Adv. Ms. Renuka Sahu, Adv. Ms. Mohina Anand, Adv.

J U D G M E N T

Ajay Rastogi, J.

1. Leave granted.
2. The instant appeal is directed against the judgment and order passed by the Division Bench of the High Court of Punjab and Haryana dated 23rd January, 2020, dismissing the writ petition at the motion stage.
3. The appellant is one of the applicants who had participated in the selection process initiated by the respondents holding selections for direct recruitment to Punjab Superior Judicial Service/Haryana Superior Judicial Service.
4. That two separate advertisements came to be published for holding competitive examination for direct recruitment for 8 vacancies in the Punjab Superior Judicial Service and 11 vacancies in the Haryana Superior Judicial Service, 2019 by notifications dated 30th May, 2019 and 7th August, 2019 respectively and the recruitment was made in terms of the procedure prescribed under the Punjab Superior Judicial Services Rules, 2007/Haryana Superior Judicial Services Rules, 2007.
5. It may be relevant to note that the posts came to be separately advertised under the Punjab/Haryana Superior Judicial Service Rules, 2007 but the process of selection is on the same standards except that language paper is separate and the applicants have to first qualify the written test followed with viva-voce with a restriction that candidate has to secure 40% or more marks in each paper and such of the qualified candidates who fall within three times of the number of vacancies are called for viva-voce but only such of the candidates will be considered to have successfully qualified the Punjab/Haryana Superior Judicial Service Examination unless in open category candidate obtains 50% marks and in reserved category candidate obtains 45% marks in the aggregate out of the total marks fixed for the written test and viva-voce. The format/pattern of examination is the same for both the recruitments held under the Punjab Superior Judicial Service Rules, 2007 and Haryana Superior Judicial Service Rules, 2007.
6. The appellant also applied pursuant to advertisement dated 30th May, 2019 and 7th August, 2019 with regard to Punjab/Haryana Superior Judicial Service Examination, 2019 and a common written examination was held for both the States of Punjab and Haryana, except Language Paper separately conducted from 29th November, 2019 to 1st December, 2019 and it reveals from the record that 118 candidates appeared in the State of Punjab and 230 in the State of Haryana.

7. Thus, in total 348 candidates participated in the selection process and appeared in the common written examination. The result of the written examination was declared on 18th December, 2019. In Punjab Superior Judicial Service, 3 candidates from open category and 1 candidate from backward category cleared the examination and qualified for viva-voce. At the same time, under the Haryana Superior Judicial Service, 11 candidates from open category out of which 3 candidates were common who qualified in both the States for viva voce.

8. The appellant, being disappointed of not being qualified in the written examination declared on 18th December 2019, filed a writ petition before the High Court of Punjab and Haryana at Chandigarh under Article 226 of the Constitution with his threefold grievance:

(i) That in Punjab/Haryana Superior Judicial Services Rules, there is no condition regarding securing minimum marks in the main written examination and the condition in the advertisement of securing minimum 40% or more marks in each paper for qualifying for viva-voce is contrary to the Scheme of Rules;

(ii) Paper V (Criminal Law) was of 200 marks but at the commencement of the examination, the question paper handed over to the candidates was incomplete and it contained only 4 questions whose aggregate came out to be 160 marks instead of 200 marks as shown on the overleaf of the question paper, but when the candidates made complaint of the alleged discrepancy to the notice of the invigilator, after approx. one hour of the commencement of examination, question no.4 was handed over as supplementary question paper to all the candidates and apart from this being a procedural defect, it created a panic among the candidates and no extra time was given for answering the additional question and this was one of the manifest procedural defect in Paper V (Criminal Law) and has caused grave prejudice to the appellant.

(iii) Despite repeated demands, the respondents have failed to provide the marks obtained by the appellant in the written examination. Even the application filed by the appellant under the Right to Information Act came to be rejected.

9. All the three objections raised by the appellant wererepelled by the High Court at the motion stage, without calling for the written response from the respondents under the judgment and order impugned dated 23rd January, 2020, which is the subject matter of challenge in appeal before us.

10. It will be relevant to note that while entertaining the present appeal and calling upon the respondents for their written response, this Court permitted the respondents by an Order dated 26th February, 2020 to continue with the process of interview with a further direction that the result would not be declared in the meantime. It is informed to this Court that in terms of the liberty granted by this Court, respondents held the interview, but result has not been declared because of the interim order of this Court.

11. The appellant, who appeared in-person before us, has primarily raised four objections in reference to the procedure adopted by the respondents in holding written examination by the respondents pursuant to the advertisements for Punjab/ Haryana Superior Judicial Service Examination, 2019, as follows:

(i) Criminal Law Paper (Paper V), which was of 200 marks contained only four questions(1,2, 3 and 5) and question no.4 was missing and it was of 160 marks which was made available to the candidates and after the discrepancy was brought to notice of the Invigilator, a supplementary question paper was supplied indicating question no.4 in the midst of examination calling upon the candidates to attempt question no.4 and objection of the appellant is that the procedure which has been adopted by the respondents itself creates a doubt in the process of selection that from where this question no.4 was generated and how it was made available to the candidates in the midst of the examination is a mystery and no justification has been tendered by the respondents even in the counter affidavit filed before this Court and this fact has not been disputed that question no.4 of Paper V (Criminal Law) was made available to the candidates during course of the examination. Thus, according to him, the procedure followed by the respondents is neither transparent nor fair and the written examination may be cancelled or at least this question paper deserves to be cancelled and the respondents be directed to hold Paper V (Criminal Law) afresh and only thereafter the merit list be declared of the candidates who qualified the main examination.

(ii) The second objection of the appellant is that in the question paper of General Knowledge (Paper VI), which was of multiple choice/objective type paper, there were no instructions on the overleaf of the examination paper as to how and in what manner the paper has to be attempted by the candidates and the OMR sheet was not supplied and the candidates were called upon to make a circle out of the four multiple choices, which according to them is correct option and the question paper supplied has to be returned back to the Invigilators.

12. The submission of the appellant-in-person is that in absence of the multiple-choice question paper being made available to the candidates to retain, it may not be possible to respond as to which option out of the four options, is the correct option. According to him, the question paper, for the first time, is made available to the appellant along with the counter affidavit filed before this Court and it reveals to him that there are discrepancies in eight questions and in some questions either of the four options are not correct.

13. His submission is that even till today, the provisional answer key has not been uploaded to make the candidates aware of the right option out of the four options available and the candidate has no liberty to raise any objection and if the answer key is uploaded after the final result is declared, obviously after the viva-voce is over, no one is going to entertain the objection, if any, to be raised at the later stage and that became *fait accompli*.

(iii) Further objection of the appellant is that Bare Acts were made available to the candidates but this fact was not indicated in the advertisement, which, according to him, is contrary to the Scheme of Rules.

(iv) Further apprehension of the appellant is that the answer scripts were examined by the examiners in haste and the reason to support is that, the last examination was held on 1st December, 2019 and within a short period of 17 days, the result was declared of the written examination on 18th December, 2019 which was not humanly possible and to

support his submission, the appellant submits that when he applied for obtaining the marks which he had secured in the written examination, under the right to information, that was declined and his application came to be rejected by the competent authority under the right to information by an order dated 6th January, 2020.

14. Noticing the four objections indicated above to its logical conclusion, the appellant submits that the procedure followed by the respondents is neither fair nor transparent and so many infirmities have been committed in the process of selection and the only inevitable solution is to cancel the written examination held by the respondents pursuant to the advertisements issued by the States of Punjab and Haryana holding common selection for Punjab/Haryana Superior Judicial Service Examination, 2019 and to hold the written examination afresh in accordance with the Scheme of Rules 2007.

15. To sum up further, the appellant states that the High Court has even noticed his submission so far as the manifest discrepancy pointed out in Paper V (Criminal Law) is concerned, but still non-suit the claim of the appellant for the reason that he has not raised any objection during the interregnum period after the written examination was held and the result was declared on 18th December, 2019.

16. The appellant further submits that the advertisement is completely silent of the mechanism to be adopted if the candidate who had participated in the selection process is having any grievance, no in-house remedy is provided in the advertisement which is available to the candidates. In the given circumstances, the reason assigned by the High Court to non-suit the claim of the appellant is not sustainable and needs to be interfered with by this Court.

17. Various applications were filed by such other candidates who had qualified the written examination and appeared for vivavoce under the interim order of this Court, but since the result has not been declared, they are also under dilemma as to what will be their fate, this Court by various orders permitted all of them to intervene in the proceedings.

18. Per contra, counsel for the respondents while supporting the finding recorded by the High Court under the impugned judgment submits that Paper V (Criminal Law) was held on 1st December, 2019 from 9.00 a.m. to 12 noon and the paper was distributed to the candidates 5 minutes before time and immediately thereafter, it was noticed that question no.4 was missing from the question paper. Within one hour and before 10.00 a.m., question no.4 was made available to all the candidates by way of supplementary question paper and as such, no prejudice was caused to any of the candidates due to inadvertent human error committed by the respondents. Counsel further submits that such a discrepancy certainly cannot be countenanced, but as the level playing field was the same for all, no prejudice has been caused to either of the candidates who had participated in the process of selection.

19. Learned counsel further submits that so far as the grievance in reference to Paper VI of General Knowledge is concerned, no such objection was raised by the appellant before the High Court, but the fact is that it is a multiple-choice question paper and instructions are made available to all the candidates on the overleaf indicating the manner in which the questions have to be attempted. It was specifically mentioned that

the correct answer has to be encircled with a pen and encircling more than one option or any over-writing/cuttings etc. would entail cancellation of the said question with no negative marking and to be answered in two hours duration and there is no reason for the appellant of making complaint to this Court for the first time and in support thereof, counsel further submitted that the result was declared after almost 17 days on 18th December, 2019, but neither he made any representation nor filed any complaint either to the Registry of the High Court or being a lawyer was aware of this fact that the remedy is available to him to approach the High Court under Article 226 of the Constitution, but no grievance was raised and he was awaiting for outcome of the written examination, and when he could not succeed, all sorts of complaints are filed by him of filing a writ petition which cannot be permitted to be raised at a belated stage and this what the High Court has observed in the judgment impugned.

20. So far as the objection with regard to his application submitted under the Right to Information Act, 2005 is concerned, learned counsel submits that the marks of the written examination could not be made available until the process of selection is finalised and that was the reason which was communicated to him by the Public Information Officer (PIO) by a communication dated 6th January, 2020 taking recourse to Rule 4(2) of the High Court of Punjab and Haryana (Right to Information) Rules, 2007 and, if at all, he is aggrieved by the communication made dated 6th January, 2020, inbuilt mechanism has been provided under the Right to Information Act, 2005 and even if the marks are not made available, it would, in no manner, defeat the process of selection held by the respondents.

21. Counsel further submits that so far as the apprehension of undue haste in declaring the result of written examination is concerned, the alleged apprehension has no legs to stand and the answer sheets have been examined by the examiners authorised by the High Court and evaluated within a reasonable time, no adverse inference can be drawn and such like objections deserve to be outrightly rejected.

22. Ms. Malvika Kapila, counsel for one of the intervenors, Aashish Saldi s/o Hans Raj Saldi, brought to our notice that the applicant is in-service officer who is presently serving as Additional Civil Judge (Senior Division) and had participated in the limited competitive examination against 10% of quota reserved for in-service officers and he had participated in the selection process initiated by the State of Punjab under the limited competitive examination for the eligible judicial officers held by the respondents in terms of Rule 7(3)(b) of the Punjab Superior Judicial Service Rules, 2007 and he was the only candidate who qualified in the written examination and was called for viva-voce but the final fate is not known to him and the fact is that he is not even remotely concerned with the present grievance which has been raised by the appellant in the instant proceedings and despite been appeared in the interview, his result has been withheld under the interim orders of this Court.

23. Learned counsel submitted that at least the respondents be directed to declare the result of the applicant who is not even remotely concerned with the complaint in reference to which the present appellant has approached this Court and this fact has not been disputed by either of the parties.

24. We have heard counsel for the parties and with their assistance perused the records of the case.

25. We deal with the first objection later and would like to observe that so far as Paper VI (General Knowledge) is concerned, it is a multiple-choice question paper having 100 questions and all instructions were made available to the candidates specifically indicated on the overleaf of the question paper and all the candidates have attempted the paper including the present appellant.

26. That all the candidates who had appeared in Paper VI (General Knowledge) had a common level playing field and in the absence of any material on record in rebuttal, the submission is not sustainable and deserves rejection. But to keep transparency in the process of holding examination, particularly in such cases where there is a multiple-choice question paper, it is always advisable that for such question papers, there shall always be an OMR sheet which may be provided to the candidates so that the question paper can be retained by each of the participants and after the examination is held, a provisional answer key is to be uploaded inviting objections from the candidates who had participated in the selection process, to be furnished within a reasonable time and after collating such objections, the same be placed before a subject expert committee to be constituted by the recruiting/competent authority and after the report is submitted by the subject expert committee, the same be examined by the recruiting authority and thereafter the final answer key is to be uploaded. We make it clear that no presumption is to be drawn that the result has to be declared, but at least the candidates may be provided the final answer keys to enable them to make their own assessment. This is one of the mechanisms by which fairness and transparency which is a *sine qua non* in the public employment can be resorted to.

27. So far as the other two objections in reference to Bare Acts made available to the candidates and the apprehension of haste in declaration of result are concerned, both the objections are completely baseless and deserve rejection.

28. So far as the marks of the written examination not being supplied to the appellant under the Right to Information Act, 2005 by communication dated 6th January, 2020, are concerned, this position has been settled by a catena of judgments of this Court that as long as the process is not complete, the marks of the written examination are not to be uploaded or made available to the candidates and if it is being permitted, that will not be in the interest of the applicants. The disclosure of the marks in the main examination before it is finalised and the viva-voce is conducted, would be against the principles of transparency, rather it will invite criticism of bias or favouritism.

29. To clarify further, in such cases, where the written examination is followed with viva-voce, declaration of result of the written examination before conducting viva-voce may not be valid and justified but in cases where determination of merit is based on written examination, it must be declared and made available to candidates without any loss of time and this Court can take a judicial notice of the fact that in such cases where the written examination is followed with interview/viva-voce and the members in the interview board are made aware of the marks secured by the candidates in the written

examination that may likely to form bias affecting the impartial evaluation of the candidates in viva-voce and in our considered view, it may always be avoided.

30. So far as the objection in reference to Paper V (Criminal Law) is concerned, we find substance in the submission made and after this fact has not been disputed by the respondents as well that initially when the question paper was supplied, it contained only four questions (i.e. question nos.1, 2, 3 and 5), held on 1st December, 2019 from 9.00 a.m. to 12 noon and the question paper was distributed to all the candidates containing four questions and question no.4 was found to be missing and this act cannot be said to be an inadvertent human error as being projected by the respondents and after the objection being raised by the candidates of question no.4 not made available, the Invigilators informed to the concerned authorities and a supplementary sheet was made available to the candidates after one hour of the main examination commenced i.e. by 9.00 a.m.

31. The respondents may substantiate in their defence that no prejudice was caused to any of the candidates on account of the inadvertent human error being committed, but in our view, this is a serious lapse on the part of the recruiting authority and somebody must be held responsible for it and such kind of lapses certainly cannot be countenanced by this Court but, at the same time, there is no objection even of the present appellant in reference to the four questions (nos.1, 2, 3 and 5) of Paper V (Criminal Law) which was made available to the candidates even 5 minutes before the scheduled time of the examination and even if we take a judicial notice of the lapses being committed by the respondents with reference to question no.4, which was indeed missing from the question paper and supplied to the candidates after one hour of commencement of the examination, at least so far as the four questions are concerned, since no objection has been raised by the appellant in reference to these questions, this Court has to consider as to whether in such peculiar circumstances, the written examination, as such, has to be cancelled or other option is possible. In our view, in the given circumstances, the other option which is left to this Court is either to conduct the examination of Paper V (Criminal Law) afresh or let the valuation of the four questions (question nos. 1, 2, 3 & 5) of Paper V (Criminal Law) of 160 marks may provide a common level playing field to all the candidates.

32. At this stage, the Court cannot be oblivious of the fact that the Punjab/Haryana Superior Judicial Service Examination, 2019 has been held after 4-5 years and since the fate of the examination 2019 is still sub-judice in this Court, fresh selection process could not have been initiated and if this irregularity pointed out can be possibly eliminated from the process of selection, particularly in the written examination, the endeavour of the Court should always be to salvage the selection as possible and taking in totality of the matter, this Court is of the view that it will serve the purpose to accept the latter option and the respondents may be directed to value question nos.1, 2, 3 and 5 of Paper V (Criminal Law) of 160 marks and we make it clear that question no.4 which was supplemented at a later stage of 40 marks has to be excluded while valuating the marks secured by the candidates in Paper V (Criminal Law) and this, in our view, may serve the purpose and also salvage the examination process which was initiated by the respondents in 2019 but could not be finalised for one or other reason and cancellation

or holding the examination afresh of Paper V (Criminal Law) will not be in the interest of either of the parties.

33. A request was made to this Court that since those candidates who had qualified in the written examination and had appeared in the viva-voce and whose result has been withheld under the interim orders of this Court, at least they may not be called upon to appear for interview afresh. We find it difficult to uphold the submission made for the reason that the interview board which conducted the viva-voce of the candidates who qualified in the written examination was different, there are hardly candidates who had qualified against the number of vacancies and it would be advisable that there should be one common board to evaluate the performance of all the candidates who may now qualify in the revised declaration of the result of written examination and that, in our view, would do justice to the candidates.

34. We would like to note that so far as the intervenor Aashish Saldi is concerned, he appeared in the written examination against 10% quota reserved for in-service officers and he had participated in the selection process initiated under Punjab Superior Judicial Services in terms of Rule 7(3)(b) of the Punjab Superior Judicial Services Rules, 2007 and who has no lis with the present process, at least the final fate of participation of the officer be declared by the respondents and may be processed further in accordance with the Rules.

35. The appeal accordingly succeeds and the impugned judgment of the High Court dated 23rd January, 2020 is hereby set aside and we direct the respondents to evaluate the marks obtained of question nos. 1,2,3 and 5 of Paper V (Criminal Law) (out of total 160 marks) and after undertaking the process, a fresh result of the written examination be declared of the candidates in reference to Punjab/Haryana Superior Judicial Service Examination, 2019 and those who qualify and fall in the zone of three times the number of vacancies may be called for viva-voce and result of the selection process, thereafter be finally declared in accordance with the scheme of Rules, 2007.

36. We further direct that the result of the intervenor (Aashish Saldi), who had participated as an in-service officer in the selection process initiated under Punjab Superior Judicial Services shall be declared and further action may be taken in accordance with Rules, 2007.

37. The directions be complied with within a period of two months.

38. Pending application(s), if any, shall stand disposed of.